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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NO. C 08-03222 CW

GREGORY JONES AND DARLENE JONES, as
successors in interest to Eric Jones;
GREGORY JONES, an individual; and
DARLENE JONES, an individual,

Plaintiffs,

ORDER GRANTING IN
PART AND DENYING IN
PART DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

v.

COUNTY OF DEL NORTE, CALIFORNIA, a
political subdivision of the State of
California; RAMSEY WILLIAMSON, an
individual; and DOES 1 through 10
inclusive,

Defendants.

/

This case involves the deadly police shooting of Eric Jones following a traffic stop. Plaintiffs, the parents of the deceased, charge Defendants County of Del Norte and Del Norte County Deputy Sheriff Ramsey Williamson with violating 42 U.S.C. § 1983 and various state tort laws. Defendants move for summary judgment on all claims. Plaintiffs oppose the motion. Having considered all of the papers filed by the parties, the Court grants Defendants' motion in part and denies it in part.

BACKGROUND

On May 16, 2008, the Del Norte Sheriff's Department received a

1 phone call from a concerned driver, who reported a black Ford
2 Ranger pickup truck traveling erratically southbound on Highway 199
3 in Del Norte County. Eric Jones was the driver of the truck. The
4 Sheriff's Department dispatcher notified Deputy Williamson, who was
5 on patrol at the time, of the alleged reckless driver. Traveling
6 northbound on Highway 199, Williamson saw Jones traveling in the
7 opposite direction, turned around, activated his emergency lights
8 and began to follow Jones' car.

9 Jones did not slow his vehicle down or make any attempt to
10 stop. He was driving between thirty and forty miles per hour
11 during the pursuit. While driving, Jones appeared to become very
12 agitated, shaking his hands, his head and his whole body. It
13 looked like he was either talking to or yelling at himself. Using
14 his car's public address (PA) system, Williamson ordered Jones to
15 pull over. Jones then crossed the yellow center divide lines and
16 drove in the wrong direction for about 500 feet. There were no
17 cars in the oncoming traffic lane at that time.

18 Using his car's PA system, Williamson again ordered Jones to
19 pull over. In response, Jones put both of his arms out of the
20 driver's side window and began shaking them. Williamson reported
21 to dispatch that Jones was "very agitated at this time." Athey
22 Decl., Exh. A at 575.

23 Deputy Carl Berry set up a tire deflation device, also known
24 as spike strips in the highway ahead of Jones. Jones drove over
25 the strips and Berry removed the strips from the highway.
26 Williamson continued to follow Jones and noticed that Jones' right
27 front tire was losing air. Jones still refused to pull over and
28 continued to make rude and defiant gestures. Berry then drove up

1 behind Williamson and followed the pursuit of Jones.

2 His tire too flat to drive on any further, Jones rolled to a
3 stop in the southbound lane of Highway 199 on a bridge. Williamson
4 and Berry parked their cars next to each other, about twenty to
5 twenty-five feet behind Jones' truck. Once the truck came to a
6 stop, Jones immediately got out and stood by the driver's side
7 door. Williamson and Berry stood behind their driver's side doors,
8 drew their service revolvers and repeatedly commanded Jones to get
9 his hands up, turn around and get on the ground. Jones did not
10 comply with these commands. Instead, Jones took an aggressive
11 fighting stance and made fists with both of his hands. Athey
12 Decl., Exh. A at 655.

13 After Jones exited his car, Deputies noticed two dogs in
14 Jones' car, a large black rottweiler and a small white pitbull.
15 Williamson claims that Jones began ordering and gesturing for his
16 dogs to move in the deputies' direction, at which point both
17 Williamson and Berry told Jones that if he sent the dogs toward
18 them they would shoot the dogs. Athey Decl., Exh. A at 655. The
19 pitbull then jumped out of Jones' truck but did not exhibit any
20 aggressive behavior. It sniffed around Berry's patrol car and then
21 ran back into Jones' truck. Williamson maintained his focus on
22 Jones and the rottweiler, which was now sitting in the driver's
23 seat of the truck.

24 Berry was able to holster his gun and transition to his taser
25 and he took over with the verbal commands. Athey Decl., Exh. A at
26 500, 511, 655. At this point, Sheriff's Deputy Joseph Garcia
27 arrived on the scene from the northbound lane. Garcia, dressed in
28 plain clothes, immediately exited his vehicle, deployed his baton

1 and commanded Jones to get down to the ground. Garcia was
2 approaching Jones from behind. According to Garcia, Jones did not
3 respond to his commands and instead told the officers to "fuck off"
4 and to "leave him alone." Athey Decl., Exh. A at 507. Garcia
5 slowly started to approach Jones while continuing to give commands.

6 At this point, Defendants' versions of the events diverge from
7 those of other percipient witnesses. According to Defendants, once
8 Jones noticed Garcia moving toward him, Jones took a few steps in
9 the direction of Williamson and Berry. Jones then assumed a
10 fighting stance, legs spread apart, with his fists clenched.

11 Mitchell Decl., Exh. A, 64:7-13. Then, Jones whistled at his dogs
12 and yelled, "[G]et him." Athey Decl., Exh. A at 508. The
13 rottweiler exited Jones' car and began to "charge" Garcia.
14 Williamson shot the rottweiler when it was approximately twenty
15 feet from Garcia. At the time Williamson shot the rottweiler,
16 neither Berry nor Garcia had their weapons drawn; and Jones was
17 standing still with his hands visibly by his side.

18 Then Williamson turned his attention to Jones, who was
19 approximately ten to fifteen feet away and running full speed
20 toward Williamson, with his fists clenched, yelling, "[Y]ou
21 motherfucker." Mitchell Decl., Exh. A, 53:13-54:6, 55:25-56:11,
22 91:25-92:13, 121:14-17. Williamson thought about transitioning
23 from his firearm to a taser, but claims that he didn't have enough
24 time to do so. Williamson started to back away from Jones and then
25 fired two shots at Jones when he was about ten feet away. Mitchell
26 Exh. A, 121:14-16, 151:23-25. Williamson testified that Jones "was
27 running full board towards me. I had no doubt that if he got
28 within striking distance of me, he would attempt to cause serious

1 bodily harm or death." Mitchell Decl., Exh. A, 121:14-16.
2 Williamson shot Jones in the abdomen and shoulder and Jones fell
3 forward to the pavement approximately six to eight feet from
4 Williamson.

5 Plaintiffs recount a different version of the events. Two
6 percipient witnesses, Mark Russo and Brandon Smith, who had
7 unobstructed views of the incident, claim that Jones never clenched
8 his fists or took an aggressive fighting stance when he exited his
9 car. Galipo Decl., Exh. D., Russo Dep. 103:5-12; Galipo Decl.,
10 Exh. E, Smith Dep. 74:15-75:4. Although Williamson and Garcia
11 claim that the rottweiler charged Garcia, Russo and Smith did not
12 see the dog run at any of the officers or see Jones gesture for the
13 dog to attack.¹ Galipo Decl., Exh. D at 104:21-24. At most, Russo
14 observed the dog move away from the car towards Garcia, at a speed
15 somewhere in between a run and a walk. Galipo Decl., Exh. D at
16 108:20-25 (testifying "the dog did not run; the dog did not walk;
17 it was something in the middle."); Id., Exh. E at 63:23-25
18 (describing the dog as "walking forwards"). Smith and Russo claim
19 that Jones was about thirty to forty feet away from Williamson when
20 Williamson shot the dog. Galipo Decl., Exh. D at 108:6-14; Id.,
21 Exh. E at 79:17-20.

22 According to Smith and Russo, after Williamson shot the
23 rottweiler, Jones never ran at or tried to attack any of the
24 deputies. Galipo Decl. Exh. D at 103:5-22; id., Exh. E at 74:15-
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26 ¹It is not clear from the evidence how far Russo and Smith
27 were from the shooting incident; however, Smith testified that he
28 was too far away to hear any conversations between Jones and the
officers or any commands that Jones may have given to his dogs.
Galipo Decl., Exh. E at 75:12-14.

1 75:10, 76:20-77:11. Smith testified that, once the dog was shot,
2 Jones took only one or two steps toward the dog, not toward the
3 officers, and had only moved a few feet before Williamson shot
4 Jones. Galipo Decl., Exh. E at 74:15-75:10, 76:20-77:11. Smith
5 also testified that it did not appear that Jones was about to
6 injure or kill any officer at the time of the shooting. Galipo
7 Decl., Exh. E at 77:2-11. Further, Garcia testified that,
8 throughout the entire incident, "from any position that I
9 personally was in, I would not have used deadly force." Galipo
10 Decl., Exh. C, Garcia Dep. 171:3-4.

11 The entire sequence of events, from the time Williamson
12 initially drew his weapon on Jones until he shot Jones, took about
13 one and one-half minutes. Athey Decl., Exh. A at 545.

14 Jones' parents, Gregory and Darlene Jones, assert six causes
15 of action against Defendants Del Norte County and Deputy
16 Williamson.

17 Plaintiffs' first cause of action is charged against
18 Williamson for violating Jones' civil rights under 42 U.S.C.
19 § 1983, alleging excessive force in violation of the Fourth and
20 Fourteenth Amendments of the United States Constitution. The
21 second and third causes of action assert a § 1983 claim against the
22 County of Del Norte, alleging that the deprivation of Jones'
23 constitutional rights resulted from a long-standing practice or
24 custom which constitutes the County's standard operating
25 procedures. Plaintiffs' third, fourth and six causes of action are
26 asserted against Williamson and the County under state law for
27 assault and battery, negligence and wrongful death respectively.
28 Plaintiffs' fifth cause of action is a negligent training and

1 supervision claim against Del Norte County.

LEGAL STANDARD

3 Summary judgment is properly granted when no genuine and
4 disputed issues of material fact remain, and when, viewing the
5 evidence most favorably to the non-moving party, the movant is
6 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
7 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
8 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
9 1987).

10 The moving party bears the burden of showing that there is no
11 material factual dispute. Therefore, the court must regard as true
12 the opposing party's evidence, if supported by affidavits or other
13 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815
14 F.2d at 1289. The court must draw all reasonable inferences in
15 favor of the party against whom summary judgment is sought.
16 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
17 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
18 1551, 1558 (9th Cir. 1991).

19 Material facts which would preclude entry of summary judgment
20 are those which, under applicable substantive law, may affect the
21 outcome of the case. The substantive law will identify which facts
22 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
23 (1986).

DISCUSSION

25 I. Individual Liability Under 42 U.S.C. § 1983

26 Plaintiffs' first cause of action asserts a § 1983 claim

27 against Williamson for unreasonable use of force. Defendants

28 maintain that the doctrine of qualified immunity shields them from

1 liability for Plaintiffs' § 1983 claim. The defense of qualified
2 immunity protects "government officials . . . from liability for
3 civil damages insofar as their conduct does not violate clearly
4 established statutory or constitutional rights of which a
5 reasonable person would have known." Harlow v. Fitzgerald, 457
6 U.S. 800, 818 (1982).

7 The threshold question is whether, if all factual disputes
8 were resolved in favor of the party asserting the injury, the
9 evidence would show the defendant's conduct violated a
10 constitutional right. Saucier v. Katz, 533 U.S. 194, 201 (2001).
11 "If no constitutional right would have been violated were the
12 allegations established, there is no necessity for further
13 inquiries concerning qualified immunity." Id. On the other hand,
14 if a violation could be made out on the allegations, the next step
15 is to ask whether the constitutional right at issue was clearly
16 established. Id. The question here is whether it would be clear
17 to a reasonable officer that his conduct was unlawful in the
18 situation he confronted. Id. If the law did not put the officer
19 on notice that his conduct would be clearly unlawful, summary
20 judgment based on qualified immunity is appropriate. Id.

21 Plaintiffs claim that Williamson is not entitled to qualified
22 immunity because his conduct violated the clearly established
23 Fourth Amendment right to be free from unreasonable use of force by
24 a police officer. In "Fourth Amendment unreasonable force cases,
25 unlike in other cases, the qualified immunity inquiry is the same
26 as the inquiry made on the merits." Scott v. Henrich, 39 F.3d 912,
27 914-15 (9th Cir. 1994) (quoting Hopkins v. Andaya, 958 F.2d 881,
28 885 n.3 (9th Cir. 1992)).

1 Claims of excessive force which arise in the context of an
2 arrest, investigatory stop or other "seizure" of a person are
3 analyzed under a reasonableness standard. Graham v. Connor, 490
4 U.S. 386, 395 (1989). The use of deadly force is a seizure subject
5 to the reasonableness requirement of the Fourth Amendment.
6 Tennessee v. Garner, 471 U.S. 1, 7 (1985).

7 The question in an excessive use of force claim is "whether
8 the officers' actions are 'objectively reasonable' in light of the
9 facts and circumstances confronting them, without regard to their
10 underlying intent or motivation." Graham, 490 U.S. at 397.
11 Determining whether use of force is reasonable "requires a careful
12 balancing of 'the nature and quality of the intrusion on the
13 individual's Fourth Amendment interests' against the countervailing
14 governmental interests at stake." Id. at 396 (quoting in part
15 United States v. Place, 462 U.S. 696, 703 (1983)). Reasonableness
16 "must be judged from the perspective of a reasonable officer on the
17 scene, rather than with the 20/20 vision of hindsight." Id. The
18 calculus "must embody allowance for the fact that police officers
19 are often forced to make split-second judgments -- in circumstances
20 that are tense, uncertain, and rapidly evolving -- about the amount
21 of force that is necessary in a particular situation." Id. at 396-
22 97.

23 An officer's use of lethal force is reasonable if "the officer
24 has probable cause to believe that the suspect poses a significant
25 threat of death or serious physical injury to the officer or
26 others." Garner, 471 U.S. at 3. The Ninth Circuit has recognized
27 that deadly force cases "pose a particularly difficult problem
28 under this regime because the officer defendant is often the only

1 surviving eyewitness." Scott, 39 F.3d at 915. Thus, the court
2 "must ensure that the officer is not taking advantage of the fact
3 that the witness most likely to contradict his story--the person
4 shot dead--is unable to testify. The judge must carefully examine
5 all the evidence in the record, such as medical reports,
6 contemporaneous statements by the officer and the available
7 physical evidence, as well as any expert testimony proffered by the
8 plaintiff, to determine whether the officer's story is internally
9 consistent and consistent with other known facts." Id.

10 Contrary to Defendants' assertions, there are several disputed
11 material facts that prevent entry of summary judgment on the basis
12 of qualified immunity. Drawing all reasonable inferences in favor
13 of Plaintiffs, a reasonable jury could infer that Jones did not
14 pose an immediate threat of death or serious bodily injury to any
15 of the deputies or anyone else. Although Jones was fleeing from
16 the police, during his face-to-face interaction with Williamson,
17 Jones' hands were visible to deputies at all times, including the
18 time of the shooting. Plaintiffs have presented evidence that the
19 dogs exited Jones' car on their own accord and were not commanded
20 to attack. While Defendants claim that Jones charged Williamson
21 after the dog was shot and that Jones was within steps of
22 physically attacking Williamson when Williamson discharged his
23 weapon, Plaintiffs have presented admissible evidence that Jones
24 simply took two steps towards his dog after it was shot and that he
25 was approximately twenty-five to thirty-five feet away from
26 Williamson at the time he was shot. At no point did Jones make a
27 furtive movement which could be interpreted as reaching for a
28 weapon. At the time of the shooting, the only other two officers

1 at the scene, Garcia and Berry, did not feel threatened enough to
2 draw their guns. In sum, under the reasonable inferences that can
3 be made from the version of facts presented by Plaintiffs,
4 Williamson is not entitled to qualified immunity. Therefore, the
5 Court denies Defendants' summary judgment motion on the § 1983
6 claim against Williamson.

7 II. Municipal Liability Under 42 U.S.C. § 1983

8 Plaintiffs' second cause of action asserts a § 1983 Monell
9 claim against Del Norte County. A municipality may be liable under
10 § 1983 when the enforcement of a municipal policy or custom was the
11 moving force behind the violation of a constitutionally-protected
12 right. Monell v. Dep't of Social Services, 436 U.S. 658, 663-64
13 (1978). Plaintiffs claim that the policy in question is the
14 County's failure to act. "To impose liability against a county for
15 its failure to act, a plaintiff must show: (1) that a county
16 employee violated the plaintiff's constitutional rights; (2) that
17 the county has customs or policies that amount to deliberate
18 indifference; and (3) that these customs or policies were the
19 moving force behind the employee's violation of constitutional
20 rights." Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th
21 Cir. 2006).

22 Here, even viewing the facts in the light most favorable to
23 Plaintiffs, their Monell claim fails. Plaintiffs have not
24 presented any evidence that the County had a custom or policy that
25 amounted to deliberate indifference to situations involving the use
26 of deadly force. Further, Plaintiffs have not created a triable
27 issue of fact as to whether the County was deliberately indifferent
28 to officer training in general. In contrast, the County presented

1 evidence of the training that each deputy receives, which exceeds
2 the standards established by the California Commission on Peace
3 Officers Standards and Training (POST). The POST curriculum
4 includes training in the use of force and firearms and all peace
5 officers employed by the County are required to undergo a minimum
6 of twenty-four hours of Advanced Officer Training every two years.
7 Moreover, the County's written policy regarding the use of force
8 conforms to Ninth Circuit law: "A deputy may use deadly force to
9 protect himself/herself or others from what he/she reasonably
10 believe would be an imminent threat of death or serious bodily
11 harm." Athey Decl., Exh. A at 554. In sum, Plaintiffs have not
12 created a triable issue of fact concerning Del Norte County's
13 § 1983 liability under Monell. Therefore, the Court grants
14 Defendants' summary judgment motion on this claim.

15 III. State Tort Liability

16 Plaintiffs sue Del Norte County for negligent training and
17 supervising; and they sue both Del Norte County and Williamson for
18 assault and battery, negligence and wrongful death.

19 A. Negligent Training and Supervising

20 Plaintiffs assert that Del Norte County "breached its duty of
21 care by failing to train and supervise Deputy Ramsay Williamson to
22 ensure that he carried out his duties in a lawful manner." Compl.
23 ¶ 51. However, California Government Code § 815(a) provides that
24 "except as otherwise provided by statute, [a] public entity is not
25 liable for an injury, whether such injury arises out of any act or
26 omission of the public entity or a public employee or any other
27 person." Thus, direct tort liability against a municipality must
28 be authorized by statute. Further, California law does not provide

1 a basis to hold a municipality directly liable for its alleged
2 "negligence in the selection, training, retention, supervision, and
3 discipline of police officers." Munoz v. City of Union City, 120
4 Cal. App. 4th 1077, 1112 (2004).

5 Plaintiffs argue that the County may be vicariously liable for
6 the acts of its employees under California Government Code
7 § 815.2(a). This section provides, "A public entity is liable for
8 injury proximately caused by an act or omission of an employee of
9 the public entity within the scope of his employment if the act or
10 omission would, apart from this section, have given rise to a cause
11 of action against that employee or his personal representative."
12 Cal. Gov't Code § 815.2(a). In order for the County to be liable
13 for negligent supervision, Plaintiffs must demonstrate that a
14 specific employee is liable for negligent supervision. While
15 "public entities always act through individuals, that does not
16 convert a claim for direct negligence into one based on vicarious
17 liability." Munoz, 120 Cal. App. 4th at 1112. Plaintiffs have not
18 presented any direct evidence that Del Norte County's employees
19 negligently supervised and trained other employees.

20 B. Assault and Battery, Negligence and Wrongful Death

21 Defendants' only argument in favor of dismissing Plaintiffs'
22 state law claims for assault and battery, negligence and wrongful
23 death is that there are no triable issues of material fact in
24 support of Plaintiffs' § 1983 excessive force claims. Because the
25 Court concludes that Plaintiffs' § 1983 excessive force claim will
26 proceed to trial, Defendants' argument is not well-taken.

27 Defendants do not address these tort claims in their reply brief.
28 Thus, Defendants have not proved that there are no triable issues

1 of material fact concerning Plaintiffs' tort claims for assault and
2 battery, negligence and wrongful death. Accordingly, the Court
3 denies Defendants summary judgment on these claims.

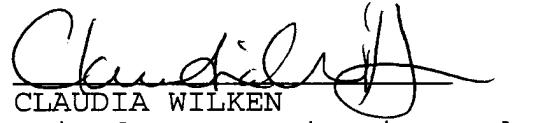
4 CONCLUSION

5 For the foregoing reasons, the Court grants in part and denies
6 in part Defendants' summary judgment motion (Docket No. 44).
7 Plaintiffs' § 1983 claim against Williamson and their state tort
8 claims for assault and battery, negligence and wrongful death
9 against Williamson and Del Norte County will proceed to trial.
10 However, the Court notes that the assault and battery, negligence
11 and wrongful death claims against Del Norte County may be pursued
12 only through a theory of vicarious liability, not direct liability.
13 See Cal. Gov't Code § 815.2(a).

14 IT IS SO ORDERED.

15 Dated:

16 JAN - 7 2010


17 CLAUDIA WILKEN
18 United States District Judge
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